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UASC/HSDG SPACE CHARTER AGREEMENT

FMC Agreement No. 012302



Expiration Date: None

This Agreement has not been published previously.

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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the UASC/HSDG Space Charter Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize UASC to charter space to HSDG in the Trade (as hereinafter defined) and to authorize the parties to enter into cooperative working arrangements with respect to the chartering of such space.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "Party" or "Parties") are:

1. UNITED ARAB SHIPPING COMPANY (S.A.G.)
UASC Building, Al Garhoud Road
P.O. Box 55586
Deira Dubai, United Arab Emirates
2. HAMBURG-SUDAMERIKANISCHE
DAMPFSCHIFFFAHRTSGESELLSCHAFT KG ("HSDG")
Willy-Brandt-Strasse 59-61
20547 Hamburg, Germany

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers the trade between ports in Asia (Japan to Indonesia range) and Egypt on the one hand and ports on the Atlantic (Eastport, Maine to Key West, FL) and Pacific Coasts of the United States on the other hand (the "Trade").

ARTICLE 5: AGREEMENT AUTHORITY

5.1 UASC shall charter to HSDG, and HSDG shall purchase from UASC, slots and reefer plugs on each weekly sailing of the following services operated by UASC, either alone or in cooperation with other carriers pursuant to filed and effective agreements, in the amounts shown:

<u>Service</u>	<u>Space/Weight Allocations (in TEUs, @ 10 tons/TEU)¹</u>	<u>Reefer Plugs</u>
AWS1	492-517 ²	37-39
AWS2	200	15
AWS4	600	45
AUC1 (Asia-PNW)	200	15
AUC 1 (Asia-USEC)	200	15

The foregoing space shall be available to HSDG based on TEUs or weight, whichever is reached first. The space shall be provided on such terms and conditions (including slot charter hire) as the Parties may from time to time agree. Any unused slots or plugs in HSDG's allocation shall be for the use of UASC. Subject to space availability, HSDG may purchase additional slots from UASC on such terms and conditions as the Parties may from time to time agree. In addition, upon mutual agreement of the Parties and without further amendment thereto, any or all of the foregoing allocations may be adjusted upward or downward by up to 30%. Is it understood and agreed that

¹ These are the allocations to be used on an on-going basis. During an initial phase-in period, the actual amount of space chartered may be lower on some or all strings.

² Since vessels of different sizes are deployed in this string, the amount of space chartered on each voyage will vary by vessel type.

the foregoing allocations may be adjusted on a *pro rata* basis in the event of port draft/move count restrictions.

5.2 HSDG shall not sub-charter any of the space made available to it hereunder to any third-party ocean common carrier without the prior consent of UASC; provided, however that HSDG may sub-charter space to its wholly-owned vessel operating subsidiaries or its vessel-operating affiliates. Such subsidiaries and affiliates may not sub-charter any space they receive from HSDG hereunder. HSDG shall remain liable to UASC for the due performance and fulfillment of this Agreement by any entity to which it sub-charters space.

5.3 (a) The port rotations and port calls of the services are subject to review by UASC. In case of port omissions, notice of same shall be provided to HSDG in accordance with such timeline as may be established by the Parties from time to time. The Parties are authorized to agree on their respective responsibilities for costs arising from the deviation of a vessel from the long-term schedule and/or *ad hoc* rescheduling measures. Additional ports of call may be added on an *ad hoc* basis at the discretion of UASC if such call(s) do not affect schedule integrity, weekly fixed frequency, and normal transit time. In the case of such additional calls, UASC will be responsible for the additional costs and will have exclusive rights of load/discharge at such ports; provided, however, that HSDG may load/discharge from/to such ports provided it accepts its share of the additional costs of call including, but not limited to, port costs, fuel and deviation costs in proportion to its share of containers loaded/discharged/re-stowed in such port(s).

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(b) UASC shall be responsible for compliance with the long-term schedules for the services and HSDG shall cooperate by adhering to this Agreement and procedures established by the Parties hereunder. Notwithstanding the preceding sentence, in the event UASC considers it impossible to adhere to the long-term schedule for reasons beyond its reasonable control, then it shall inform HSDG of a revised port rotation. Should a specific vessel delay or reasonable preventative measures taken by UASC to protect the vessel, her crew and cargo, or other persons on board necessitate *ad hoc* rescheduling measures, then UASC shall without undue delay propose a proper rescheduling plan for the concerned vessel, which plan may include one or several port omissions. In the event the Parties do not agree on such necessary *ad hoc* rescheduling measures, then UASC will decide on appropriate and reasonable measures, always trying to mitigate the burden of such measures on the Parties.

5.4 The Parties are authorized to discuss and agree on their respective rights, obligations, responsibilities and liabilities with respect to: (a) UASC's failure to load HSDG containers; (b) the scheduling and execution of the dry docking and/or repair of vessels; and (c) the seasonal or other *ad hoc* cancellation of sailings.

5.5 The Parties are authorized to discuss and agree on the joint and/or individual negotiation of appropriate contracts with terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo, such as but not limited to overtime, stand-by time and common costs sharing.

5.6 The Parties are authorized to discuss and agree upon any and all technical and operational matters described in 46 C.F.R. §535.408(b) such as procedures for allocating space, forecasting, stevedoring and terminal operations, recordkeeping, responsibility for loss, damage or injury (including provisions of bills of lading relating to same), dangerous and hazardous cargo, general average, salvage, the interchange of information and data regarding all matters within the scope of this Agreement, terms and conditions for force majeure relief, insurance, guarantees, indemnification, and compliance with customs, safety, security, documentation, and other regulatory requirements.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND
DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of each of the Parties; and
- (ii) Legal counsel for each of the Parties.

ARTICLE 7: MEMBERSHIP AND READMISSION

Membership is limited to the Parties hereto except that additional ocean common carriers may be admitted or readmitted by unanimous consent of the Parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

ARTICLE 8: VOTING

Except as otherwise provided herein, all actions taken pursuant to this Agreement shall require unanimous agreement of the Parties.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

9.1 This Agreement shall become effective as of the date it becomes effective under the U.S. Shipping Act of 1984 and may be implemented as of that date or such later date as the Parties may agree (the "Commencement Date"). The Parties are not required to implement the Agreement with respect to all services on the same date.

9.2 This Agreement shall remain in force until at least May 19, 2016, and continue indefinitely thereafter. It may be terminated by either Party giving not less than 6 months advance written notice to the other Party, such notice not to be given prior to November 19, 2015. In the event the Agreement is terminated, it will be terminated with respect to all services in the same week the termination takes effect, unless otherwise agreed.

9.3 Notwithstanding Article 9.2 hereof, the Agreement may also be terminated as follows:

(a) By either Party giving notice less than one month's prior written notice of termination if, following the outbreak of war (whether declared or not) or hostilities or the imminence thereof, or riot, civil commotion, revolution or widespread terrorist activity, that Party is of the opinion that the events will render the performance of the Agreement hazardous or wholly or substantially imperiled;

(b) If one Party (the affected Party) is prevented by Government intervention (not caused by the contractual obligations of a Party to that government) or decree or by law from continuing in the Trade, or if its performance becomes illegal and the unaffected Party considers that the absence of the affected Party will substantially prejudice the continued viability of the service, then the unaffected Party, may, with immediate effect, either terminate or suspended the Agreement for such period as it deems appropriate in its sole discretion.

(c) Immediately by one Party if a change of control (as defined by the Parties from time to time) occurs with respect to the other Party.

(d) Immediately by either Party, if the other Party makes a general assignment for the benefit of creditors, or any proceeding is instituted by or against the other Party seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up or reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy or insolvency, provided that, in the event of any such proceeding instituted against the other Party, such proceedings have not been stayed or dismissed within a period of sixty days.

9.4 Upon the termination of this Agreement for whatever cause:

(a) A final calculation shall be carried out of the amount due (if any) under this Agreement and any amount due to be paid within 30 days of the date of termination if not otherwise due for payment at an earlier time;

(b) The carriage of cargoes already lifted shall be completed by UASC by due delivery at the port of discharge; and

(c) The Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued prior to termination.

9.5 Any notice of termination served under this Agreement shall be sent in writing by registered mail to the address set out in Article 13 below.

ARTICLE 10: APPLICABLE LAW AND ARBITRATION

10.1 This Agreement, and any matter or dispute arising out of or in connection with this Agreement, shall be governed and construed in accordance with the laws of England.

10.2 Any dispute or differences arising out of or in connection with this Agreement which cannot be resolved amicably shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Article 10.2.

10.3 The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced, unless when the amount in dispute is less than USD 100,000, in which case the LMAA Small Claim Procedure shall apply. The reference shall be to three arbitrators and the provisions of English law and the LMAA Terms shall apply to their appointment. For the avoidance of doubt each party will be responsible for the fees of its arbitrator. Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

10.4 The Parties shall keep confidential all awards made, together with all materials in the proceedings created for the purpose of the arbitration, and all other documents produced by another Party in the proceedings not otherwise in the public domain— save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a court or other competent judicial authority.

ARTICLE 11: NON-ASSIGNMENT

No Party may assign or transfer its rights or obligations under this Agreement either in part or in full to any third party, company, firm or corporation without the prior written consent of the other Party whose consent may be withheld for any reason. This does not apply to wholly owned subsidiaries or affiliated companies.

ARTICLE 12: COMPLIANCE WITH LAW

12.1 The Parties agree to comply with all applicable laws, rules, regulations, directives, orders issued by any authorities having jurisdiction in relation to the Service and this Agreement. Any consequence to this Agreement resulting from the non-compliance of a Party with mandatory applicable laws and regulations such as, but not limited to, the United Nations resolutions, the relevant European Union regulations concerning the economic sanctions and the US federal and state laws and regulations (collectively, “Applicable Laws”) will be borne in full by that Party.

12.2 A Party in breach (“Breaching Party”) of Applicable Laws shall indemnify and hold the other Party harmless to the full extent of any loss, damage, cost, expense

and liability, including reasonable attorney's fees and court costs but always excluding indirect loss of profits and consequential or indirect losses or damages, for:

- (a) any failure, of Breaching Party to comply with Applicable Laws; and
- (b) any failure of the other Party to comply with Applicable Laws based on the other Party's reliance on certifications provided by the Breaching Party under this Agreement, and
- (c) any false statements or material omissions by the Breaching Party with respect thereto, including without limitation export classification and country of origin of items procured by the other Party under this Agreement.

12.3 For avoidance of doubt, Parties shall be relieved from any liability under Article 12.2 in the event non-compliance is caused by a shipper's omission or false declaration; provided that Party shall have exercised due diligence in implementing all reasonable controls on parties and commodities so as to ensure compliance with respect to Applicable Laws.

12.4 Each Party warrants that it is not identified on the U.S. Treasury Department's list of specially Designated Nationals and Blocked Persons (the SDN List) and goods and/or containers transported under this Agreement will not be transported on a vessel owned and/or operated by any party identified on this list. For sake of clarity this includes Islamic Republic of Iran Shipping Line (IRISL) and HDS Lines. This restriction also includes any vessel identified on said list or owned and/or operated by HDS Lines.

12.5 The Parties agree not to transport any cargo under this Agreement which to their knowledge is ultimately destined to Iran or is of Iranian origin, unless such

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respective cargo or the transportation of cargo is not listed or identified as sanctioned any longer.

ARTICLE 13: NOTICES

Communication of all written notices required pursuant to this Agreement (other than a notice of termination, which will be sent by registered mail) shall be sent by first class airmail, by courier service, via fax machine to the following addresses or as otherwise advised:

To: Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG
Willy-Brandt-Strasse 59-61
20547 Hamburg
Germany

Attention: Mr. Philipp Arning
Telephone: +49 40 37052519
Fax: +49 40 37659308

To: United Arab Shipping Company
Al Garhoud Road
P.O. Box 55586, Deira, Dubai
United Arab Emirates

Attention: Mr. Tom Stage Petersen
Telephone: +971 4 602 2973
Fax: +971 4 295 4539

Any notice hereunder shall be effective upon receipt by the other Party.

ARTICLE 14: MISCELLANEOUS

14.1 If any provision(s) of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then the said provisions shall cease to have effect between the Parties but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

14.2 No variation or waiver of any of the provisions of this Agreement and no Agreement concluded pursuant to any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Parties.

14.3 Nothing in this Agreement shall give rise to nor shall be construed as constituting a partnership for any purpose or extent. No Party shall be construed or constituted as agent of the other unless expressly stated or constituted as such by the terms of this Agreement. Each Party shall utilize and maintain its own pricing, marketing and sales organizations and functions, issue its own bills of lading, collect its own freight and settle its own claims with respect to cargo moving under its bills of lading.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed
by their duly authorized representatives as of this 31st day of October, 2014.

HAMBURG SUDAMERIKANISCHE DAMPFSSCHIFFFAHRTS-
GESELLSCHAFT KG

By: 

Name:

Frank Smet

Title:

Member of the Executive Board

*pp. P. K. J.
Ph. Hoffmann
Global Head of Network*

UNITED ARAB SHIPPING COMPANY (S.A.G.)

By: 

Name:

Anil J. Vitaran

Title:

Vice President, Americas Cluster